United Nations A/C.6/61/SR.1

General Assembly
Sixty-first session

Official Records

Distr.: General
31 October 2006

Original: English

Sixth Committee

Summary record of the 1st meeting
Held at Headquarters, New York, on Tuesday, 10 October 2006, at 10 a.m.

Chairman: Mr. Gómez Robledo ..... (Mexico)

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06-56202 (E)

The meeting was called to order at 10.05 a.m.

Organization of work (A/C.6/61/1 and A/C.6/61/L.1)

1. **The Chairman** said that the Committee had a crucial role to play in the revitalization of the work of the General Assembly by ensuring that the Assembly's function as a legislative body was upheld. Efforts were needed to prevent any further undermining of the principles of negotiation and consensus. It was a cause of concern that standards of international law which had proved effective in preventing violence in international relations were being called into question by those responsible for ensuring the application of those standards or by parties acting on the basis of a particular doctrine. The allocation of new agenda items to the Committee could mark the beginning of a fresh process of codification and development of international law. The work of the Committee was relevant to all aspects of human life because it consisted in forming the *opinio juris* necessary to ensure the application of the rule of law.

2. He extended a warm welcome to the Head of the Liaison Office of the International Criminal Court, an institution whose work was closely connected with that of the Committee.

3. He drew attention to the allocation of agenda items to the Committee as contained in document A/C.6/61/1 and to the note by the Secretariat on organization of work (A/C.6/61/L.1), in particular the proposed timetable for the consideration of items contained in paragraphs 3 to 6 of the latter document.

4. Agenda item 153 (Requests for observer status in the General Assembly) had been referred to the Committee as a standing item. The Committee therefore needed to establish a clear procedure for the submission and consideration of such requests. The Bureau had proposed that the report of the International Law Commission on the work of its fifty-eighth session (A/61/10) should be considered in four parts. He took it that the Committee agreed with that proposal.

5. *It was so decided.*

6. **The Chairman** said that, in accordance with the established practice, the proposed work programme would be applied with flexibility in the light of the progress made by the Committee and that the Committee would take action on draft resolutions as soon as they were ready for adoption.

7. The Committee must allow sufficient time for the preparation and consideration of the estimates of expenditure arising from draft resolutions. Since the Committee was due to conclude its work on 9 November 2006, all draft resolutions with financial implications must be submitted to the Fifth Committee by 29 October 2006, except for those relating to agenda items due to be considered after that date. He took it that the Committee wished to proceed on the basis of the proposed work programme.

8. *It was so decided.*

9. **The Chairman** said that the work programme just agreed upon took into account the need for efficient use of time and resources. During the sixtieth session, the Committee had improved its conference service utilization rate in comparison with the previous year, but had nonetheless lost more than 13 hours owing to meetings starting late and ending early. That rate could be improved if meetings began on time and if, in the event that the Committee was unable to proceed with its discussion of one item, delegations were prepared to consider the next item on the agenda. Lastly, he drew the Committee's attention to paragraph 13 of General Assembly resolution 59/313, which invited Member States that were aligned with statements already made by the chair of a group of Member States, where possible, to focus additional interventions made in their national capacity on points that had not already been adequately addressed in the statements of the groups in question, bearing in mind the sovereign right of each Member State to express its national position.

10. **Ms. Sarne** (Philippines), noting that the Philippines had submitted a request for observer status in the General Assembly on behalf of the Association of Southeast Asian Nations (ASEAN), requested information on the current status of the request.

11. **The Chairman** said that the request had been received. However, consultations were still continuing on how such requests would now be handled. It was the view of the Bureau that the best course of action would be to adopt a draft resolution for early submission to the General Assembly on the new procedure to be followed. He hoped to report on the outcome of the consultations as soon as possible.

Statement by the Legal Counsel

12. **Mr. Michel** (Under-Secretary-General for Legal Affairs, the Legal Counsel) said that the international community took great interest in the work of the Committee, which represented an important contribution to the development of international law. At the current session, in addition to the items it traditionally dealt with, the Committee would be considering a number of new items relating to the topical issues of maintenance of international peace and security and the promotion of justice and international law.

13. The Committee's work on all the items allocated to it was crucial, not only because it promoted international law but also because it served as a reminder of the essential role of law in international relations, particularly in the context of current challenges. Indeed, no other body was in a better position to ensure that law and justice were regarded as key principles in the United Nations, legitimizing both the Organization and its activities. He pledged the continued support of the Office of Legal Affairs for the Committee's work.

Agenda item 77: Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session (A/61/17)

14. **Mr. Karangizi** (Chairman of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report on the work of its thirty-ninth session (A/61/17), said that the Commission had approved in principle a draft UNCITRAL legislative guide on secured transactions designed to assist countries in modernizing their security interests law; it was expected to be submitted for final approval by the Commission at its fortieth session, in 2007. While that guide had not been prepared with intellectual property laws in mind, its relevance to security rights in intellectual property had been recognized. A colloquium was scheduled on the subject, on 18 and 19 January 2007, to obtain the views of experts.

15. The Commission had also at its thirty-ninth session concerned itself with issues relating to the settlement of commercial disputes. It had adopted model legislative provisions on interim measures of protection, taking into account the fact that such measures were increasingly being requested and granted in the practice of international commercial arbitration. It had decided on the form of the arbitration agreement in the UNCITRAL Model Law on International Commercial Arbitration and had adopted a recommendation in that connection, calling for it to be recognized that the circumstances described in article II of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards were not exhaustive, and allowing a broad interpretation of its article VII (1). It had mandated its Working Group II (Arbitration and Conciliation) to undertake revision of the UNCITRAL Arbitration Rules.

16. Turning to the question of procurement, he said that Working Group I had continued to consider issues relating to the use of electronic communication and technologies in procurement and had reached a preliminary agreement on draft revisions of the 1994 Model Law on Procurement of Goods, Construction and Services and the Guide to Enactment. The Commission had recommended that, in updating the Model Law and the Guide, the Working Group should take into account the issue of conflict of interest and consider whether any specific provisions on the subject should be included therein.

17. In the area of transport law, Working Group III had made good progress in the preparation of a draft convention on the international carriage of goods by sea, particularly with regard to some of the difficult issues involved. The Working Group was scheduled to complete its second reading by the end of 2006 and its final reading by the end of 2007, with a view to presenting the draft instrument for finalization by the Commission in 2008.

18. With regard to future work in specific areas, the Commission believed that while the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Model Law on Electronic Signatures and the Convention on Electronic Contracts provided a good basis for States to facilitate electronic commerce, a favourable legal framework needed to be established. The Secretariat had accordingly been requested to prepare a comprehensive reference document to help legislators and policymakers, particularly in developing countries, to develop such a framework, dealing with such topics as authentication and cross-border recognition of electronic signatures, unfair competition and deceptive trade practices in electronic

commerce, and cybercrime for consideration by the Commission at its fortieth session.

19. In the area of insolvency law, he noted that the international colloquium to consider proposals for future work had taken place in November 2005 and that the topic of the treatment of corporate groups in insolvency would be referred to Working Group V (Insolvency Law) for consideration in 2006. It had been agreed that the compilation of practical experience in the negotiation and use of cross-border protocols should be facilitated through consultation with judges and insolvency practitioners; a preliminary progress report on the subject would be submitted to the Commission for consideration at its fortieth session.

20. With regard to commercial fraud, it had again been recognized that, since commercial fraud deterred legitimate trade and undermined confidence in established contract practices, the UNCITRAL transactional and private-law perspective and expertise were necessary for fully understanding the problem and developing measures to combat it. The UNCITRAL secretariat was continuing to cooperate with the United Nations Office on Drugs and Crime for a study on fraud and the falsification of identity.

21. Another project discussed by the Commission was the ongoing monitoring of the legislative implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). It had agreed that its work should be geared to the development of a legislative guide that would promote uniform interpretation of that Convention.

22. Technical assistance activities continued to be an essential part of the Commission's work; they were, however, dependent on the availability of funds. He stressed that, despite an increase in the number of instruments, their impact was declining, particularly in developing countries. He called on members of the Committee to reverse that trend through a fresh commitment to UNCITRAL's work, in particular through contributions to the UNCITRAL Trust Fund.

23. Technical assistance also took the form of the CLOUT system for the collection and dissemination of case law on UNCITRAL texts. He emphasized in that connection that the digest of case law on the United Nations Sales Convention was being reviewed and edited and that the first draft of a digest of case law relating to the Model Law on International Commercial Arbitration was being finalized for publication.

24. UNCITRAL welcomed the inclusion in the agenda of the current session of the General Assembly of an item on the rule of law, which could not be considered, however, without factoring in the role of international trade law. The Commission's resources and expertise in that field should therefore not be overlooked in the discussion.

25. The harmonization and unification of international trade law required active cooperation and coordination among rule-formulating organizations. The Commission regarded the reports prepared by its secretariat on the work of concerned international organizations as effective tools to that end. He recalled that its decision to adopt a more proactive approach to its coordination role had been endorsed by the General Assembly; its secretariat was accordingly engaging in dialogue on both legislative and technical assistance activities with a number of interested organizations. The work being performed in that area by UNCITRAL, as the core legal body in the United Nations system in the field of international trade law, was particularly important and justified the use of travel funds. In further support of coordination, the Commission proposed that the current edition of the Unidroit Principles of International Commercial Contracts be circulated to States with a view to their endorsement at its fortieth session.

26. Lastly, he expressed the Commission's satisfaction with the special event organized by its secretariat for the signing of the United Nations Convention on the Use of Electronic Communications in International Contracts, adopted by the General Assembly in 2005, and announced the convening of the UNCITRAL congress on modern law for global commerce, to be held from 9 to 12 July 2007.

27. **Mr. Bühler** (Austria) expressed his delegation's satisfaction with the efforts made by the Commission to enhance cooperation and coordination with other international organizations and to expand its technical assistance activities. Through its key work in the field of international trade law, it contributed significantly to strengthening the rule of law at the national and international levels. He urged the Commission and its secretariat to continue and further intensify its efforts to that end.

28. One of its most important achievements in the past year had been the preliminary approval of the draft UNCITRAL legislative guide on secured transactions, aimed at providing a legal framework that would facilitate secured financing and thus promote access to low-cost credit and enhance national and international trade. Austria looked forward to its finalization and approval by the Commission at its fortieth session.

29. His delegation commended the Working Groups for the progress they had made. It welcomed the adoption of the revised provisions of the 1985 UNCITRAL Model Law on International Commercial Arbitration and the recommendation regarding the interpretation of provisions of the 1958 New York Convention and was following with particular interest the work on procurement and transport law.

30. He noted that the current year marked not only the thirtieth anniversary of the adoption of the UNCITRAL Arbitration Rules, but also the fortieth anniversary of the adoption of the General Assembly resolution establishing UNCITRAL. In the light of that anniversary, his delegation warmly welcomed the decision of the Commission to hold a congress on international trade law during its fortieth session, to be held in Vienna, in 2007.

31. **Mr. Prasad** (India) said that the draft legislative guide on secured transactions, approved in principle by the Commission at its most recent session, was bound to assist countries in adopting modern legislation in that area, thereby increasing access to low-cost credit and facilitating the cross-border movement of goods and services. He noted the cooperation between Unidroit and the UNCITRAL secretariat in ensuring consistency between that guide and the draft Unidroit securities convention. He referred to the revised legislative provisions on interim measures of protection and the form of the arbitration agreement; they were expected to update significantly the provisions of the 1985 UNCITRAL Model Law on International Commercial Arbitration and further facilitate the use of arbitration as a dispute settlement mechanism in international commercial relations. Caution should be exercised, however, in undertaking a revision of the UNCITRAL Arbitration Rules of 1976, as they were widely recognized and had served as a model both for national legislation and for dispute settlement mechanisms in bilateral investment protection agreements; care should to taken to safeguard their flexibility. In the area of insolvency law, his delegation hoped that, in considering the treatment of corporate groups in insolvency, the Commission would build upon its previous work. He noted with satisfaction the progress made by Working Group V (Insolvency Law), Working Group III (Transport Law) and Working Group I (Procurement), and welcomed the UNCITRAL secretariat's cooperation with the United Nations Office on Drugs and Crime in the area of commercial fraud. Lastly, he expressed appreciation for the secretariat's technical assistance activities and its collection and dissemination of case law on UNCITRAL texts.

32. **Ms. Blum** (Colombia) praised the outstanding work done by the Commission at its thirty-ninth session and said that the recommendations of the draft UNCITRAL legislative guide on secured transactions were based on the fundamental principles underpinning legal systems. If adopted, they would promote the harmonization required in order to make security rights more effective. In that respect, it would be advisable for the secretariat, in cooperation with the World Intellectual Property Organization (WIPO) and other competent international organizations to prepare a document on future work on security rights and intellectual property law, given the highly specific nature of that area of the law.

33. When the UNCITRAL Arbitration Rules were revised, the process should preserve the structure and spirit of the text, but should bring it up to date. It was vital that the list of topics presented by the Working Group should be concise and enjoy the broadest support possible.

34. As the use of electronic communications and technologies in the procurement process was a sensitive matter, albeit one of great significance for States and societies, a model law on the subject ought to take into account the unequal technological conditions that existed, particularly in developing countries. The principle which should guide the inclusion of such new practices and technologies in an updated Model Law on Procurement of Goods, Construction and Services should be the transparency of any public procurement transaction.

35. The progress made by Working Group III (Transport Law) on a draft convention on transport law was encouraging, but the provisions on freedom of contract deserved careful scrutiny by the Group in order to ensure that that legal principle they embodied

was in line with the functional nature of the convention.

36. UNCITRAL could make a substantial contribution to the prevention of commercial fraud and should, in that context, indeed look into the use of business transactions for asset-laundering. UNCITRAL should also continue its coordination of the activities of international organizations in the field of trade law. She therefore expressed her satisfaction that a congress on uniform commercial law in the twenty-first century would be held in July 2007. Lastly, consideration should be given to the proposal to establish a trust fund to support the wider participation of young lawyers from developing countries in the internship programme run by the Commission's secretariat.

37. **Mr. Lamine** (Algeria) welcomed the progress made by Working Group II (Arbitration and Conciliation) with the updating of the provisions of the UNCITRAL Model Law on International Commercial Arbitration and the adoption by the Commission of a declaration regarding the interpretation of articles II (2) and VII (1) of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. His Government supported the Commission's decision to opt for a recommendation rather than a declaration which could be misinterpreted as to its nature. It also endorsed the Commission's decision to give priority to the revision of the UNCITRAL Arbitration Rules by the Working Group, which should in particular examine the implications of electronic communications in that context.

38. Working Group VI (Security Interests) had made good headway towards developing a legislative guide on secured transactions which included some very useful recommendations on the priority of security rights over the rights of competing claimants, the pre-default rights and obligations of the parties and the rights and obligations of third-party obligors. His Government supported the Commission's intention to refer the definition of the term "consumer goods" to Working Group VI.

39. It was true that intellectual property rights were increasingly becoming an extremely important source of credit which should not be excluded from a modern secured transactions law, since they often constituted an essential and valuable component of operations to finance equipment and inventory and that the recommendations of the draft legislative guide on secured transactions generally applied to secured rights in intellectual property insofar as they were not inconsistent with intellectual property law. The UNCITRAL secretariat should therefore prepare a note discussing the scope of future work by the Commission on intellectual property financing for consideration at the fortieth session.

40. It would be wise to finalize a draft convention on transport law in 2008. In view of the complexity and magnitude of the work involved, the length of the Working Group's sessions should be extended.

41. The preparation of 54 issues of the Case Law on UNCITRAL Texts (CLOUT) for publication was an important aspect of the technical assistance provided by UNCITRAL. Similarly, the Commission's website was a valuable source of information in the six official languages of the Organization. It would be an excellent idea to set up a trust fund to enable young lawyers from developing countries to participate more in the internship programme. He was pleased that an agreement had been reached to hold a congress on modern law for global trade in 2007.

42. **Ms. Laohaphan** (Thailand) said that all countries were seeking to achieve economic growth, peace and prosperity. While globalization and the increased flows of international trade and investment had contributed towards the realization of those goals, they had heightened the complexity of commercial transactions, technology and legislation. For that reason, the Commission should pursue its role of facilitating commercial transactions and harmonizing international trade legislation.

43. As it was necessary gradually to harmonize national laws to keep up with the pace of global cooperation and economic integration, her Government had adopted several pieces of legislation based on the model laws and legislative guidelines of UNCITRAL. Moreover, it was vital to foster cross-border trade and enhance economic relationships at the regional level. The experience of UNCITRAL and its legal instruments would help the Association of Southeast Asian Nations (ASEAN) to develop its own legal framework for international trade that remained in step with the rest of the world.

44. The progress made by Working Group III (Transport Law), and by Working Group I (Procurement) in the revision of the UNCITRAL Model Law on Procurement of Goods, Construction

and Services to encompass the use of electronic communications and new practices, such as electronic reverse auctions, was commendable. With regard to the future work programme in the field of international insolvency, the Commission had taken a wise decision to focus on the treatment of corporate groups, while allowing its secretariat flexibility to organize the work on other related topics such as post-commencement financing and cross-border insolvency protocols.

45. Continued work under the system established for the collection and dissemination of case law on UNCITRAL texts (CLOUT) would promote the uniform interpretation and application of those texts. The latter should, however, be revised to achieve consistency through the use of such well-established principles as functional equivalence and technical neutrality.

46. Nevertheless, for the Commission to be successful, its model laws and conventions needed to be incorporated in national legislation. To that end, more resources should be devoted to technical assistance for developing countries for that purpose. The convening of the next UNCITRAL congress the following year would be of critical importance, because it would provide an opportunity to review the results of past work programmes and select topics for future work.

47. **Mr. Alday** (Mexico) said he was pleased to note the adoption of a new chapter IV of the UNCITRAL Model Law on International Commercial Arbitration, as it filled a legal vacuum which had started to pose problems, not only with regard to the concept of interim measures and the conditions for granting or refusing them, but also with respect to provisional orders to act or to take no action which had been issued without hearing the party concerned. It was necessary to establish uniform rules for the execution of interim measures granted by arbitral tribunals, especially when the latter were not located in the place in which the measure would be enforced. Another big legal gap had been the lack of any provision on the collaboration of courts which would empower them to order interim measures in support of arbitration. The new chapter reflected modern arbitral practice and users' needs. It was to be hoped that the explanatory material would be published as soon as possible and its incorporation in national legislation promoted.

48. The amendment of articles 7 and 35 offered practical and legislative solutions necessitated by the increasing use of arbitration to settle disputes between international operators. The amendments to the UNCITRAL Model Law on International Commercial Conciliation would help to forge a link between the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and current practices. The recommendation on the flexible interpretation of the Convention was a major step in that direction. The solutions offered by UNCITRAL would enhance the rule of law in the field of international trade.

49. The addition of an article on the uniform interpretation of the UNCITRAL Model Law on International Commercial Arbitration brought the latter up to date. When the Model Law had been drafted, the principle of its uniform interpretation and the possibility of implementing it had appeared utopian, but the establishment of the system of national correspondents and the new information technologies had turned that principle into a reality. The UNCITRAL secretariat's digest relating to the Law was of great value to the users of international arbitration.

50. The revision of the UNCITRAL Arbitration Rules should update the latter without changing those which had been demonstrably successful and had generated a large body of case law. The Working Group should also consider whether management disputes of corporations and disputes in fields such as industrial property, intellectual property, insolvency and economic competition could be submitted to arbitration.

51. He was pleased that Working Group VI (Security Interests) might conclude its deliberations in time to present a final text of the legislative guide on secured transactions to the Commission at its fortieth session.

52. With regard to the progress made with the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services, it was very important for States to have a sound framework for public procurement and the relevant practices should be revised in order to secure transparency, legal certainty and a more efficient use of resources. It was to be hoped that experience with the application of that instrument and practices in the field of electronic contracts would be taken into account in a set of rules which would meet the needs of States at

various stages of development. For that reason, it was essential to retain principles such as functional equivalence, security of information, authenticity and confidentiality. However, in order to ensure the wider application of harmonized rules, further studies and consultations would be needed so as to make sure that issues related to electronic reverse auctions would encourage medium-sized and large enterprises to become more competitive.

53. Concerning the deliberations of Working Group III (Transport Law), it would certainly constitute a big step forward if rules could be introduced for volume contracts which guaranteed legal certainty for shippers and made provision for adequate checks on the system of general liability. Further studies and consultations would be required in order to make sure that the future treaty struck a balance promoting the interests of all concerned by transport activities, which would give States a greater incentive to become parties to the instrument.

54. Future work on commercial fraud and electronic commerce as outlined in the Commission's report (A/61/17) would be a very useful means of gaining an insight into the legal challenges facing the international community in those fields. It was to be hoped that the studies on commercial fraud would take into account advances in electronic commerce and modern contract practices. It was worrying to note the increase in international commercial fraud perpetrated through the Internet. Such fraudulent practices should be examined with a view to eliminating the existing legal vacuum.

55. Lastly, given the importance of safeguarding the efficiency of arbitration and providing a suitable framework so as to avoid the non-enforcement of arbitral awards and decisions, it was vital that efforts be continued to obtain the requisite information and cooperation so that the Commission could speed up the monitoring of the application of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

56. **Mr. Tan** (Singapore) applauded the fact that Working Group II (Arbitration and Conciliation) had completed its work on interim measures of protection and the written form requirement for arbitration agreements and that the recommendation on the interpretation of articles II (2) and VII (1) of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards had been adopted. The legal texts produced by UNCITRAL had proved very useful to countries like his own which were seeking to modernize and harmonize their laws.

57. In an electronic age, the Convention on the Use of Electronic Communications in International Contracts would enhance legal certainty and commercial predictability when electronic communications were used in international contracts. Electronic commerce was the key to allowing businesses to reach out in a borderless world and the Convention was a milestone in that it provided the legal infrastructure to facilitate the growth of such commerce. Furthermore, he hoped that the revision of the 1994 Model Law on Procurement of Goods, Construction and Services could be completed by 2008.

58. Unfortunately many countries were not familiar with the good work done by UNCITRAL, yet it was important that the international texts it produced should become more widely known and adopted by the majority of States. That was the purpose of the UNCITRAL secretariat's technical assistance programmes, which therefore deserved greater support.

59. **Ms. Wilcox** (United States of America) said that UNCITRAL had continued to take a technical and non-politicized approach to the reform of commercial and economic law and had focused on the promotion of commerce in all geographic regions and for States at all levels of development. It had recognized that, despite the liberalization of trade through international agreements, the failure to upgrade commercial laws had meant that many cross-border transactions took place under sufficiently unfavourable terms as to sharply limit their effect on economic growth. The Commission's work was helping to close that gap and reflected the practical achievements possible within the United Nations system.

60. As the Commission had finalized its revision of the Model Law on International Commercial Arbitration, Working Group II (Arbitration and Conciliation) could be expected to move on to other issues. Her Government had been in favour of the vision behind the recommendations on secured finance reform since they were based on modern commercial laws rather than older traditions. It had also supported the Convention on the Use of Electronic Communications in International Contracts and its market-oriented approach to laws which enabled

electronic commerce without overly regulating that new field and it was therefore pursuing internal processes to seek authority to sign the Convention.

61. Coordination remained an important focus; hence she encouraged further work on insolvency law pertaining to cross-border business and trusted that it would lead to the merging of the insolvency legislative recommendations made by the Commission. Her Government also backed the parallel recommendations prepared by the World Bank with the goal of establishing a single standard for adoption by the Bank and the International Monetary Fund.

62. The continuing efforts of the Commission's other Working Groups on the carriage of goods, cross-border insolvency law and the procurement of goods, construction and services were welcome, as were the Commission's endeavours to tackle the growing problem of commercial fraud in a number of sectors. Since that work did not fall conveniently into the core area of activity of any United Nations body, it should be coordinated with the United Nations Office of Drugs and Crime and other United Nations bodies as appropriate.

63. The conference which the Commission would host as part of its 2007 plenary session should be allowed to run for the maximum time agreed by the Commission so as to allow all interested bodies in the public and private sectors to present their views. The efficiency and management approach which had made it possible for the Commission to greatly expand its activities while remaining within its existing budget was commendable.

64. **Mr. Rachkov** (Belarus), welcoming the favourable outcome of the deliberations at the thirty-ninth session of the Commission, said that the latter had fulfilled the role of coordinator between the other international organizations engaged in the sphere of international trade law.

65. With a view to its accession to the World Trade Organization (WTO), his Government was harmonizing its national legislation with international standards and was interested in making use of the expertise of UNCITRAL in the field of international arbitration, the cross-boundary purchase and sale of goods, the international carriage of goods, public procurement, international payments and electronic commerce.

66. It was to be hoped that the progress achieved to date on the draft UNCITRAL legislative guide on secured transactions would permit the preparation of a comprehensive and balanced document at the fortieth session. Noting the success of the activities of Working Group VI (Security Interests) and Working Group II (Arbitration and Conciliation), he expressed support for the Commission's decision that Working Group II should give priority consideration to the revision of the UNCITRAL Arbitration Rules in 2007.

67. As for new legal topics, UNCITRAL should turn its attention to the formulation of unified standards to prevent commercial fraud, above all in the spheres of electronic commerce, bankruptcy and insolvency. In the wake of the accession of Belarus to the United Nations Convention on the Law of the Sea, the work of Working Group III (Transport Law) on bills of lading, maritime way-bills and other transport documents was of increasing importance for his Government.

68. The adoption of the United Nations Convention on the Use of Electronic Communications in International Contracts was a welcome step, given the significant role played by computer technologies and electronic communications in the conclusion of international contracts. His Government would consider whether to formally become a party to the Convention once the national plan for the development of electronic trade in 2006 and 2007 had been implemented.

69. In the process of UNCITRAL reform, maximum use should be made of the Commission's potential and of its comparative advantages in the interests of Member States. His delegation was willing to participate more actively in the Commission's work. To that end, a coordinating council on cooperation with the Commission had been established in 2004. Its experts took part in the meetings of the Commission's working groups. Documentation prepared by the Commission, including the case law on UNCITRAL Texts (CLOUT), had become an important part of his country's legal system. The Supreme Commercial Court had used CLOUT to analyse foreign courts' use of the UNCITRAL Model Law on International Commercial Arbitration and the United Nations Convention on Contracts for the International Sale of Goods. The information Belarus gathered on the rulings of commercial courts which relied on the provisions of UNCITRAL conventions was regularly

forwarded to the UNCITRAL secretariat for inclusion in CLOUT.

70. Lastly, he thanked the UNCITRAL secretariat for its assistance with the organization of an international seminar on cross-boundary commercial arbitration and the international purchase and sale of goods, held in Minsk in October 2005, and said he looked forward to continued cooperation between Belarus and UNCITRAL in the future.

71. **Ms. Collet** (France) said that her delegation welcomed the increase in the membership of UNCITRAL, which reflected growing interest in the Commission's activities. She hoped that that growth would be accompanied by more active participation by all members in the Commission's work. Coordination of the activities of the many international organizations active in the field of trade law and publication of documents describing those activities were important aspects of that work.

72. Her delegation considered that the functions of the Commission and its various working and expert groups should be clarified. The roles of the various categories of participants — Member States, observer States and non-governmental entities — should also be more clearly defined. Her delegation intended to put forward in due course some suggestions regarding clarification of the Commission's procedures and working methods. In that connection, her delegation wished to emphasize the importance of respect for the official languages of the Commission. Full participation by delegations, in particular French-speaking ones, was dependent on the availability of language services. Translation and interpretation should therefore be assured in order to enable the Commission to fulfil its mandate more effectively.

73. Her delegation was pleased with the Commission's approval of the essential provisions of the draft legislative guide on secured transactions, the content of which respected the different legal traditions and was consistent with the evolution of legislation on the subject. It was less pleased with the legislative provisions on interim measures ordered by international arbitral tribunals. The model provisions adopted by the Commission seemed excessively complex and not well aligned with current arbitration practice. With regard to the draft convention on the international carriage of goods by sea, in order to ensure the widest possible acceptance of the future instrument, the draft convention must balance the interests of the different categories of States and operators concerned. Australia and France had submitted a joint proposal in that regard (A/CN.9/612). Maritime transport was a sensitive subject, and the Commission should give due attention to the legitimate concerns of States.

74. **Mr. Pandey** (Nepal) said that promotion of the progressive harmonization and unification of the law of international trade was a vehicle for socio-economic development. The development, modernization and harmonization of international trade law would provide countries, especially developing and least developed ones, with a tool for dealing with the increasing volume and complexity of international trade and business resulting from globalization, while also enhancing the confidence of potential investors and promoting trade and development. Nepal acknowledged the importance of the Commission's four decades of work in that regard and encouraged it to continue that work.

75. Nepal, a least developed and landlocked country, had been making efforts to use various UNCITRAL instruments as legislative guides and models in matters relating to both national and international trade law. His delegation urged UNCITRAL, through its technical assistance programme, to give special consideration to enhancing the national capacity of least developed countries to make their trade regimes qualitative and competitive. In particular, Nepal requested the Commission to develop its technical assistance programme on law reform and welcomed the establishment of a technical assistance and coordination unit within the UNCITRAL secretariat. In that connection, it encouraged UNCITRAL to continue coordinating and cooperating with other organizations in areas of international trade law of mutual interest.

76. Nepal welcomed the adoption of the United Nations Convention on the Use of Electronic Communications in International Contracts, believing that it would help to enhance legal certainty and commercial predictability where electronic communications technology was used in relation to international contracts. Lastly, Nepal supported the convening of an UNCITRAL congress in 2007. His delegation noted, however, that many members of the Commission had been unable to participate in the 2006 session, owing to financial constraints, and urged UNCITRAL and its secretariat to take measures to

provide financial assistance to ensure participation, particularly by least developed countries, in the congress and other future activities of the Commission.

77. **Mr. Playle** (Australia) said that his delegation welcomed the work being done on revising the UNCITRAL Arbitration Rules, which should result in improvements of considerable practical use. However, like other Commission members, Australia was concerned about the slow progress of Working Group II in revising the UNCITRAL Model Law on International Commercial Arbitration. The work on provisions relating to interim measures and preliminary orders had been particularly contentious. Those provisions had finally been presented to UNCITRAL during its thirty-ninth session, six years after the work had begun, but Australia and others remained concerned about the text and questioned whether the proposed provisions would lead to greater uniformity in the implementation of the Model Law.

78. His delegation believed that the task of producing a new instrument on the international carriage of goods [wholly or partly] [by sea], though lengthy and ambitious, was a worthy undertaking. Many technical issues in the draft remained to be resolved, but Working Group III had been making good progress. A major issue for Australia was that of jurisdiction and arbitration. It was critical that a cargo claimant should be able to litigate in its own jurisdiction. A related issue was the volume contract exemption and the potentially wide scope for parties to derogate from the mandatory liability regime. Australia was concerned that allowing parties to derogate from the draft instrument would undermine uniform implementation. Australia and France had jointly proposed a narrowing of the volume contract exemption, to which his delegation hoped the Working Group would give favourable consideration. Australia was optimistic that the end result of the Group's work would be a workable and widely supported modern international instrument on the carriage of goods by sea.

79. Australia supported the Commission in its work on developing a legislative guide on secured transactions, and hoped that the guide would be approved at the next session. That work was especially timely for his country, which was currently considering reform initiatives in regard to secured transactions law. Intellectual property rights were increasingly important as a source of credit, and should not be excluded from a modern secured transactions law. Accordingly, his delegation strongly commended the Commission for its proposal to explore the application of secured transactions law to intellectual property rights, provided it did not delay approval of the guide by the Commission in 2007. If necessary, work on intellectual property rights could be undertaken as a separate exercise, with a view to a later amendment of the guide.

80. Australia commended UNCITRAL for coordinating and cooperating with other international organizations, welcoming, in particular, the Commission's decision to consider the Principles of International Commercial Contracts adopted by the International Institute for the Unification of Private Law (Unidroit) with a view possibly to endorsing them in 2007.

81. **Mr. Medrek** (Morocco) said that, as a member of UNCITRAL, Morocco continued to take a keen interest in the Commission's work in modernizing and harmonizing international trade law. That work was more necessary than ever in order to reduce and eventually eliminate legal barriers to international trade, especially those encountered by developing countries. His delegation was pleased to note that significant progress had been made during the thirty-ninth session with regard to security interests, arbitration and procurement.

82. Morocco welcomed the work done on the draft legislative guide on secured transactions and supported the recommendations approved by the Commission on the basic approaches to security that enshrined the comprehensive approach and the functional approach that should be followed in a modern secured transactions law. His delegation encouraged Working Group VI to submit the draft legislative guide to the Commission for approval in 2007.

83. Concerning the work under way in the area of arbitration and conciliation, the progress made with regard to draft legislative provisions on interim measures was welcome. His delegation agreed that the effectiveness of arbitration as a method of settling commercial disputes depended on the possibility of enforcing such interim measures. That being the case, there could be no question as to the need for a harmonized and widely acceptable model legislative regime governing interim measures granted by arbitral tribunals and ordered by courts in support of arbitration.

84. His delegation also welcomed the progress made concerning the draft legislative provision on the form of arbitration agreements and the adoption of the draft recommendation regarding the interpretation of article II (2) and article VII (1), of the New York Convention. The latter would ensure a uniform interpretation of certain provisions of the Convention without interfering with the competence of States parties to issue binding declarations regarding its interpretation. With respect to future work in the field of settlement of commercial disputes, Morocco favoured the revision of the UNCITRAL Arbitration Rules. It also encouraged the Commission to examine the issue of arbitrability.

85. With regard to the use of electronic communications and technology in the procurement process, his delegation was pleased with the preliminary agreement reached by Working Group I concerning the draft revisions to the UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Guide to Enactment, and encouraged the Group to proceed with those revisions. Morocco also supported the efforts of Working Group III to prepare a legislative instrument on issues relating to the international carriage of goods by sea, and hoped that the Working Group would complete the final reading of the draft convention by the end of 2007 so that it could then be presented for finalization by the Commission in 2008. In relation to electronic commerce, his delegation believed that a comprehensive reference document would be of great use to legislators and policymakers, particularly in developing countries; it would also assist the Commission itself in identifying areas in which it might undertake future harmonization work.

86. Morocco attached great importance to technical assistance and capacity-building activities for the benefit of developing and transition countries. In that regard, his delegation was convinced of the need for additional effort to enable such States to participate in the work of UNCITRAL in order to ensure that their needs and interests were reflected in the end products of that work. Lastly, his delegation reiterated its support for the initiatives aimed at strengthening the Commission and improving its working methods.

87. **Mr. Wickremasinghe** (United Kingdom) said that his delegation had been pleased to take part in the discussion on the amendments to the UNCITRAL Model Law on International Commercial Arbitration, which had led, after many difficult sessions, to the finalization and adoption of legislative provisions on interim measures of protection and on the written form for arbitration agreements. The United Kingdom had also been pleased to participate in the recent meeting of Working Group II (Arbitration and Conciliation) that had begun work on updating the UNCITRAL Arbitration Rules. The focus of that important project should be to update those elements of the rules that, in the light of experience, required amendment. The United Kingdom actively supported the work of Working Group I (Procurement) and the current review of the UNCITRAL Model Law on Procurement of Goods, Construction and Services, which would afford an important opportunity to introduce modern procurement practices, such as electronic procurement, into the Model Law.

88. His delegation had taken part in the international insolvency colloquium held in Vienna in November 2005 to discuss and prioritize possible future work on insolvency law, and looked forward to contributing to the efforts of Working Group V (Insolvency Law) to establish international guidelines and best practice for the treatment of corporate groups in insolvency.

89. The United Kingdom welcomed the convening of an UNCITRAL congress in 2007 to review the results of past and current work programmes and to discuss topics for future work.

90. **Ms. Pasheniuk** (Ukraine) said that the importance of the issues dealt with by the Commission during its thirty-ninth session and the results achieved, in particular in the area of secured transactions, confirmed once again the key role of UNCITRAL in developing and harmonizing the rules governing international trade. The approval in principle of the key objectives and major policies of a draft legislative guide on secured transactions and the adoption of revised legislative provisions on interim measures of protection and the form of the arbitration agreement marked substantial additional steps in that direction. Those documents would significantly assist all States in enhancing their respective legislation or in formulating such legislation where none existed. Her delegation encouraged the Commission to continue its work on the preparation of legal standards that could provide a legal framework promoting access to low-cost secured credit.

91. Ukraine noted with satisfaction the adoption by the Commission of a recommendation regarding the interpretation of articles II (2) and VII (1) of the New York Convention, which would greatly promote uniform interpretation and application of the Convention. Ukraine also welcomed the decision of the Commission that Working Group V (Insolvency Law) should consider the treatment of corporate groups in insolvency, including post-commencement financing, with the work to compile practical experience on negotiating and using cross-border protocols to be undertaken informally in consultation with judges and insolvency practitioners. Her delegation believed that progressive developments in that area would promote uniform handling of transnational insolvency cases.

92. Her delegation attached great importance not only to the Commission's efforts to develop new international legal instruments and guidelines in the sphere of international trade, but equally to its activities aimed at ensuring effective implementation and wider appreciation of those instruments. Bearing in mind the Commission's limited resources, she wished to stress the importance of maintaining close cooperation between UNCITRAL and other international bodies and organizations engaged in activities relating to international trade law. Such cooperation would undoubtedly contribute to further unification and harmonization of legal rules and norms.

93. **Mr. Padukkage** (Sri Lanka) said that as the world became more globalized, there was an increasing need to unify international trade laws. The work of UNICTRAL was therefore central. His delegation believed that incorporating the provisions of UNCITRAL model laws into national legislation would enhance the competitiveness of many developing countries. Sri Lanka had signed the United Nations Convention on the Use of Electronic Communications in International Contracts, adopted the previous year, and had already begun the process of incorporating its provisions into its national legislation, notably the Electronic Transactions Act No. 19, enacted in March 2006. The Act also incorporated several features of the UNCITRAL Model Law on Electronic Signatures (2001). It marked an important development in his country's legal jurisprudence, facilitating domestic and international electronic commerce by eliminating existing legal barriers and encouraging the use of reliable forms of electronic commerce. In that connection, his delegation acknowledged the work carried out by Working Group IV (Electronic Commerce) and considered it appropriate that that work should continue, focusing on the topics identified by the UNCITRAL secretariat for future work in the area of electronic commerce.

94. His delegation congratulated the Commission for the achievements of the thirty-ninth session, in particular the approval in principle of the objective and major policies of a draft legislative guide on secured transactions and the adoption of revised legislative provisions on interim measures and the form of the arbitration agreement. Capacity-building for developing countries to enable them to adopt model laws and conventions was an indispensable element of the progressive development of international trade law. Sri Lanka therefore encouraged UNCITRAL to explore new avenues for strengthening its technical assistance programme and for addressing the resource constraints that had prevented many developing countries from participation in the Working Group meetings held in New York and Vienna.

95. Sri Lanka welcomed the progress in collection and dissemination of case law on UNCITRAL texts (CLOUT) and was happy to learn that 54 issues of CLOUT had been prepared for publication. His delegation encouraged UNCITRAL to continue to focus on enhanced cooperation and coordination with organizations engaged in the formulation of trade rules, which would avoid duplication and unnecessary complexities in the trade laws under consideration. Lastly, his delegation supported the convening of an UNCITRAL congress in 2007 and looked forward to submitting its views on the proposed programme.

The meeting rose at 1.05 p.m.